

SECOND REGULAR SESSION

# House Resolution No. 476

## 97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES MOON (Sponsor), BRATTIN, MUNTZEL, WILSON, POGUE,  
MARSHALL, HURST, BAHR AND NEELY (Co-sponsors).

5835L.011

2       **WHEREAS**, when the Second Regular Session of the Ninety-seventh General Assembly  
3 convened on January 8, 2014, there were three vacancies in the House of Representatives, and  
4 one vacancy in the Senate; and

5       **WHEREAS**, as a result of those four vacancies, approximately 285,000 Missourians are  
6 without representation in the Missouri House or Senate; and

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8       **WHEREAS**, the 120th House District seat has been vacant since June 5, 2013, with an  
9 election date to fill this vacancy recently being called for August 5, 2014. At the time of this  
10 election, the 120th House District seat will have been vacant for 430 days; and

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12       **WHEREAS**, the 67th House District seat has been vacant since December 2, 2013, with  
13 an election date to fill this vacancy recently being called for August 5, 2014. At the time of this  
14 election, the 67th House District seat will have been vacant for 246 days; and

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16       **WHEREAS**, the 151st House District seat has been vacant since December 18, 2013,  
17 with an election date to fill this vacancy recently being called for August 5, 2014. At the time  
18 of this election, the 151st House District seat will have been vacant for 230 days; and

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20       **WHEREAS**, the 22nd Senate District seat has been vacant since December 18, 2013,  
21 with no special election date having been called to fill this vacancy; and

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23       **WHEREAS**, on January 2, 2014, a lawsuit was filed in Cole County on behalf of ten  
24 people from various House and Senate Districts, stating that Governor Jeremiah W. (Jay) Nixon  
25 has been remiss in his duties as Governor by not setting dates for special elections to fill the four  
26 vacant seats; and

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28       **WHEREAS**, Article I, Sections 1 and 2 of the Missouri Constitution state foundational  
29 principles of Missouri's form of government:

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31               "Section 1. That all political power is vested in and derived from the  
32 people; that all government of right originates from the people, is founded upon  
33 their will only, and is instituted solely for the good of the whole."  
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35           "Section 2. That all constitutional government is intended to promote the  
36           general welfare of the people; that all persons have a natural right to life, liberty,  
37           the pursuit of happiness and the enjoyment of the gains of their own industry; that  
38           all persons are created equal and are entitled to equal rights and opportunity  
39           under the law; that to give security to these things is the principal office of  
40           government, and that when government does not confer this security, it fails in  
41           its chief design."; and  
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43           **WHEREAS**, Article I, Section 25 of the Missouri Constitution expressly acknowledges  
44           that Missouri citizens have the right of suffrage:  
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46           "Section 25. That all elections shall be free and open; and no power, civil  
47           or military, shall at any time interfere to prevent the free exercise of the right of  
48           suffrage."; and  
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50           **WHEREAS**, a representative voice in each house of the Missouri General Assembly is  
51           part and parcel of the constitutional right of suffrage. Any delay in securing the citizens' right  
52           of representation in the state legislature should be subject to strict scrutiny by our courts; and  
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54           **WHEREAS**, Article III, Section 14 of the Missouri Constitution requires the Governor,  
55           leaving no discretion with the Governor, to issue writs of election to fill vacancies in the  
56           Missouri General Assembly:  
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58           "Section 14. Writs of election to fill vacancies in either house of the  
59           general assembly shall be issued by the governor."; and  
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61           **WHEREAS**, Section 21.110, RSMo, also requires the Governor to issue writs of  
62           election:  
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64           "21.110. If the governor receives any resignation or notice of vacancy,  
65           or if he is satisfied of the death of any member of either house, during the recess,  
66           he shall, without delay, issue a writ of election to supply the vacancy."; and  
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68           **WHEREAS**, in addition to the April municipal general election, the August primary  
69           election, and the November general election, Section 115.123, RSMo, permits special elections  
70           to fill vacancies to be held on any Tuesday; and  
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72           **WHEREAS**, since 2005, elections have been held in February, April, June, August,  
73           September, and November; and  
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75           **WHEREAS**, Governor Jeremiah W. (Jay) Nixon has refused to set elections to coincide  
76           with the earliest possible scheduled election after each vacancy occurred, thereby infringing on  
77           the constitutional rights held by not only the 285,000 Missouri citizens who reside in the affected

districts, but all Missouri citizens who rely on full representation in the state legislature for all our citizens in order to fairly engage in the people's business; and

**WHEREAS**, the relevant constitutional and statutory provisions make it clear that a governor has no authority to deny or unreasonably interfere, as Governor Nixon has, with the citizens' right to legislative representation; and

**WHEREAS**, Article IV, Section 2 of the Missouri Constitution states:

"The governor shall take care that the laws are distributed and faithfully executed, and shall be a conservator of the peace throughout the state."; and

**WHEREAS**, in knowingly failing to issue writs of election "without delay" as required under Section 21.110, RSMo, when numerous election dates were possible, Governor Nixon has not only violated state statutory law, but has also violated the Missouri Constitution by not taking "care that laws are distributed and faithfully executed" as required under Article IV, Section 2; and

**WHEREAS**, most importantly, Governor Nixon's knowing failure to issue writs of election "without delay" unlawfully prolonged the period of time in which 285,000 Missourians will be deprived of one of their most basic rights as citizens, their right to have representation in their government; and

**WHEREAS**, Article VII, Section 1 of the Missouri Constitution states:

"All elective executive officials of the state, and judges of the supreme court, courts of appeals and circuit courts shall be liable to impeachment for crimes, misconduct, habitual drunkenness, willful neglect of duty, corruption in office, incompetency, or any offense involving moral turpitude or oppression in office."; and

**WHEREAS**, with blatant and knowing disregard for the basic right of the citizens of this state to be represented in their state legislature, Governor Nixon's breach of his constitutional duties to faithfully execute the laws of this state by knowingly failing to issue writs of elections "without delay" as required by law when numerous election dates were possible is grounds for impeachment as willful neglect of duty and misconduct in office; and

**WHEREAS**, Article VII, Section 2 of the Missouri Constitution vests the sole power of impeachment in the House of Representatives:

**NOW, THEREFORE, BE IT RESOLVED** that the Missouri House of Representatives, Ninety-seventh General Assembly, finds, charges, and presents that Governor Jeremiah W. (Jay) Nixon, while so acting as the Governor of the State of Missouri, failed to issue writs of election

for four vacancies in the Missouri General Assembly "without delay" as required by law when numerous election dates were possible, constituting an act which is an impeachable act under Article VII, Section 1 of the Missouri Constitution, and that by doing such aforesaid act Jeremiah W. (Jay) Nixon was and is guilty of the commission of willful neglect of duty and misconduct in office; and

**BE IT FURTHER RESOLVED** that the Missouri House of Representatives adopts the following:

## ARTICLES OF IMPEACHMENT

### ARTICLE I

That the Missouri House of Representatives under the authority of Article VII, Section 2 of the Missouri Constitution does find, charge, and present that Governor Jeremiah W. (Jay) Nixon, while so acting as the Governor of the State of Missouri, contrary to the standards of conduct prescribed for an elected executive official of the state, committed an act impeachable under Article VII, Section 1 of the Missouri Constitution, in that, Governor Jeremiah W. (Jay) Nixon knowingly failed to issue writs of election for four vacancies in the Missouri General Assembly "without delay" as required under Section 21.110, RSMo, when numerous election dates were possible.

That by the doing of the aforesaid act, Jeremiah W. (Jay) Nixon was and is guilty of willful neglect of duty and misconduct in office, an impeachable offense under Article VII, Section 1 of the Missouri Constitution, and that such act has shaken the faith and confidence of the citizens of the State of Missouri in their ability to have faith in their elected public officials, and has breached the public trust that the laws of this state will be faithfully executed.

### ARTICLE II

That the Missouri House of Representatives under the authority of Article VII, Section 2 of the Missouri Constitution does find, charge, and present that Governor Jeremiah W. (Jay) Nixon, while so acting as the Governor of the State of Missouri, contrary to the standards of conduct prescribed for an elected executive official of the state, committed an act impeachable under Article VII, Section 1 of the Missouri Constitution, in that, Governor Jeremiah W. (Jay) Nixon, in knowingly failing to issue such writs of election, deprived approximately 285,000 Missouri citizens of their basic right to representation in their government.

That by the doing of the aforesaid act, Jeremiah W. (Jay) Nixon was and is guilty of willful neglect of duty and misconduct in office, an impeachable offense under Article VII, Section 1 of the Missouri Constitution, and that such act has shaken the faith and confidence of the citizens of the State of Missouri in their ability to have faith in their elected public officials, and has breached the public trust that the laws of this state will be faithfully executed."; and

163           **BE IT FURTHER RESOLVED** that upon impeachment by the House of  
164 Representatives, Governor Jeremiah W. (Jay) Nixon shall stand trial before a special commission  
165 of seven eminent jurists to be elected by the Missouri Senate in accordance with Article VII,  
166 Section 2 of the Missouri Constitution for willful neglect of duty and misconduct in office; and  
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168           **BE IT FURTHER RESOLVED** that the Chief Clerk of the Missouri House of  
169 Representatives be instructed to prepare properly inscribed copies of this resolution for Governor  
170 Jeremiah W. (Jay) Nixon, the Missouri Supreme Court, and the Missouri Senate.

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